

TPA Update
DWC Quarterly Carrier Meeting
July 23, 2009

Topics:

- **House Bill 472 (80th Legislature)**
- **New Rules**
- **Applicability**
- **Contact Information**
- **Q & A**

TPA Update
DWC Quarterly Carrier Meeting
July 23, 2009

House Bill 472

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

- TPAs are entities to which insurance companies delegate authority for claim adjusting, processing, and bill payment. Most of these administrators are currently regulated by the Texas Department of Insurance (TDI) under the Texas Third Party Administrator Act. However, workers' compensation administrators are exempted from such regulation.

- HB 472 provides that workers' compensation TPAs are subject to regulation by the Texas Third Party Administrator Act. The bill also increases the auditing and reporting requirements of all TPAs to TDI.

TPA Update
DWC Quarterly Carrier Meeting
July 23, 2009

House Bill 472

Highlights of Changes enacted by HB 472 (for Carriers)

- Requirements related to notice of TPA services
- Requirements related to referral of claim or loss to TPA
- Semiannual review requirements
- On-site Audit requirements
- Compensation of TPA
- Additional exemptions added

Note: The law now provides over twenty (20) different exemptions (See the Insurance Code §§4151.002, 4151.0021 and 4151.004 (partial exemption)).

Want a copy of HB472?.....

<http://www.capitol.state.tx.us/tlodocs/80R/billtext/pdf/HB00472F.pdf>

TPA Update
DWC Quarterly Carrier Meeting
July 23, 2009

New Administrator (TPA) Rules: 28 TAC §§7.1601 - 7.1618

The adopted new sections implement House Bill 472 (effective September 1, 2007), which amended the Insurance Code Chapter 4151. The adopted rules establish the licensing, contracting, auditing, and reporting requirements of the Insurance Code Chapter 4151 for all administrators, including administrators with delegated duties in the workers' compensation system. The rules were effective June 25, 2009.

- eliminates outdated and inapplicable requirements;
- defines the scope and applicability of the adopted rules;
- streamlines the application process;
- defines the terms administrator, administrator contractor, and administrator subcontractor;
- clarifies that all persons that act or hold themselves out as administrators (including administrators who are administrator contractors and/or administrator subcontractors) are required to hold certificates of authorities under the Insurance Code Chapter 4151 and to meet the requirements of Chapter 4151 and the adopted rules;
- clarifies notification requirements for changes in control of an administrator/applicant and in facts and circumstances affecting the issuance of a certificate of authority;
- clarifies that an administrator/applicant is required to maintain the qualifications to obtain a certificate of authority under the Insurance Code Chapter 4151 at all times;

TPA Update
DWC Quarterly Carrier Meeting
July 23, 2009

New Administrator (TPA) Rules: 28 TAC §§7.1601 - 7.1618
(continued)

- prescribes fidelity bond requirements and fiduciary bank account requirements (for premium) of applicants/administrators;
- prescribes contracting requirements of administrators (Note, §7.1613 requires a written agreement required under this section to meet the requirements of this section no later than September 1, 2009);
- prescribes operational review and on-site audit requirements, which impose a minimal level of oversight and responsibility on each insurer that utilizes the services of an administrator, including an administrator contractor and an administrator subcontractor;
- prescribes annual report requirements of administrators;
- clarifies the format and content of audited financial statements under the Education Code §22.004;
- enumerates prohibited transactions;
- prescribes requirements for the transfer and maintenance of books and records;
- clarifies hazardous or injurious operating conditions for administrators; and
- establishes new application, annual report, and examination fees.

TPA Update
DWC Quarterly Carrier Meeting
July 23, 2009

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(continued)

Want a copy of the new TPA Rules?.....

<http://www.tdi.state.tx.us/rules/2008/documents/7-1601-1618.pdf>

Note: The above website address contains the entire adoption order for the rules. The actual substantive requirements of the rules start on the bottom of page 196 and end on page 220 of the adoption order. Readers are encouraged to familiarize themselves with these substantive requirements, as well as the requirements in the Insurance Code Chapter 4151.

The first 196 pages of the adoption order contain additional background information, such as the “reasoned justification” for the rules, as well as TDI’s responses to all public comments received. If readers have any questions regarding the substantive requirements that start on the bottom of page 196, they are encouraged to review the rest of the adoption order, such as the “reasoned justification”, agency responses to public comments received, etc.

TPA Update
DWC Quarterly Carrier Meeting
July 23, 2009

Applicability of New Rules: Who is a TPA?.....

Caveat: The Department, as a regulatory agency, is not authorized to render legal opinions or advice. You should refer to and rely on the Insurance Code Chapter 4151 and these new rules in all instances when making final compliance determinations. These requirements may be obtained at

<http://www.capitol.state.tx.us/tlodocs/80R/billtext/pdf/HB00472F.pdf> and
<http://www.tdi.state.tx.us/rules/2008/documents/7-1601-1618.pdf>

TPA Update
DWC Quarterly Carrier Meeting
July 23, 2009

Applicability of New Rules: Who is a TPA?.....

- Section 7.1603 provides that any person acting as or holding itself out as an administrator (including an administrator that is an administrator contractor and/or an administrator subcontractor) must hold a certificate of authority under the Insurance Code Chapter 4151-- unless a person meets an exemption under the Insurance Code §§4151.002, 4151.0021, or 4151.004.
- “Administrator” is defined in §7.1602(1) and the Insurance Code §4151.001(1) as a person who, in connection with annuities or life benefits, health benefits, accident benefits, pharmacy benefits, or workers' compensation benefits, collects premiums or contributions from or adjusts or settles claims for residents of this state. The §7.1602(1) definition further provides that the term administrator includes administrator contractors and downstream administrator subcontractors but does not include a person described by the Insurance Code §4151.002 or §4151.0021.
- In order to determine whether a person is an *administrator* as defined in §7.1602(1) or as that term is used in the adopted new rules, including §7.1601 and §7.1603, it is necessary to evaluate the functions or services that the person is actually performing or providing, or offering to perform or provide and whether the person is specifically exempted from any of the requirements of the Insurance Code Chapter 4151. Whether a particular person qualifies as an “administrator” or acts or holds itself out as an “administrator” or meets an exemption under Chapter 4151 and the adopted rules is a case-by-case, fact-specific determination.
- Section 7.1601 provides that these rules apply to a person acting as or holding itself out as an administrator in any capacity, regardless of whether the person holds another authorization under the Insurance Code or Labor Code.
- Section 7.1601(d) clarifies that the rules at 28 TAC §§7.1601-7.1618 do not apply to a person only acting as or only holding itself out as an administrator for an ERISA qualified employee welfare benefit plan that is exempt from regulation by this state with respect to that particular employee welfare benefit plan.
- If a person qualifies for a specific exemption in the Insurance Code §4151.002 or §4151.0021, the person is not an administrator for the purpose of the rules.
- However, if a person does not qualify for an exemption in Chapter 4151 or 28 TAC §§7.1601-7.1618, and the person collects or offers to collect premiums or contributions from residents of this state or adjusts, settles, or offers to adjust or settle claims for residents of this state, in connection with annuities or life, health, accident, pharmacy, or workers' compensation benefits, the person meets the definition of *administrator* in the Insurance Code §4151.001(1) and new §7.1602(1), and is required to comply fully with Chapter 4151 and the rules at 28 TAC §§7.1601-7.1618.

TPA Update
DWC Quarterly Carrier Meeting
July 23, 2009

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Questions?

